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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1604

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. ILLINOIS FEDERATION OF TEACHERS, AFT, AFL-CIO; OSCAR WEIL, ITS REPRESENTATIVE; WILLIAM STEWARD, SR., INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS; GENE ALEXANDER; HELEN BJORKMAN; LOUISA GRISHAM, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS; ANN WAHL; NORMAN G. SWENSON, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS; ARTHUR C. DONART; FRANK BANKS; HOWARD WILCOX, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS; BERNICE HAYES; ALICE WEATHERWAX, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS; AND DOROTHY BURGESS, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS,

Petitioners,

vs.

GEORGE W. LINDBERG, AS COMPTROLLER OF THE STATE OF ILLINOIS, ALAN J. DIXON, AS TREASURER OF THE STATE OF ILLINOIS, AND DANIEL J. WALKER, AS GOVERNOR OF THE STATE OF ILLINOIS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Petitioner, The People of the State of Illinois, *ex rel.* Illinois Federation of Teachers, AFT, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment and

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opinion of the Supreme Court of the State of Illinois filed in this proceeding on March 24, 1975.

OPINION BELOW.

The Decision and Order of the Supreme Court of Illinois is reported in the official State reports at 60 Ill. 2d 266 (1975) and appears in the Appendix hereto.

JURISDICTION.

The opinion and judgment of the Supreme Court of Illinois was filed on March 24, 1975. Jurisdiction is conferred in this Court by Title 28, U. S. C. § 1257 (3).

QUESTION PRESENTED.

Where Illinois laws have invested the pension rights of employees with statutory, constitutional and decisional legitimacy including:

1. A comprehensive statutory scheme designed to assure the actuarial solvency of the pension systems;

2. A constitutional amendment explicitly making membership in a pension system an enforceable contractual relationship;

3. A decision of the Court of Claims of the State of Illinois certifying the amount of the deficiency of State contributions to the systems as a debt of the State of Illinois,

do the employees possess any contractual interest which is afforded protection from nullification or impairment by Article I § 10 of the United States Constitution?

UNITED STATES CONSTITUTIONAL ARTICLE INVOLVED.

ARTICLE I, Section 10, United States Constitution:

> "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

ILLINOIS CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

Constitutional Articles.

ARTICLE XIII, Section 5, 1970 Illinois Constitution:

> "Pension and Retirement Rights. Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

ARTICLE I, Section 16, 1970 Illinois Constitution:

> "Ex Post Facto Laws and Impairing Contracts. No expost facto law, or law impairing the obligation or contracts or making an irrevocable grant of special privileges or immunities, shall be passed."

Statutes.

CHAPTER 108½ Illinois Revised Statutes § 15-101 *et seq.* generally and in particular:

§ 15-155. *Employer contributions*

> The State of Illinois shall make contributions by appropriations of the trust, federal and other funds under their control, the contributions of the participating employees, income from investments, and other income of this system, will be necessary to meet the costs of maintaining and administering this system:

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(1) the total amount of the employer contribution for any fiscal year shall be the sum of the amounts estimated to be required, on the basis of the actuarial tables adopted by the board and the prescribed rate of interest to meet the disability benefits, additional death benefits, the employers' portion of the cost of all annuities and survivors insurance benefits and expense of administration expected to be paid during the year and to result in the accumulation of assets at the end of the year equal to the sum of the following:

(a) the liability for all annuities expected to be paid to the then annuitants, and the survivors insurance benefits expected to be paid;

(b) the liability for all accumulated additional, normal, and survivors insurance contributions of the then participants;

(c) the single premium reserve required for the employers' portion of the cost of all annuities which have then accrued because of previous earnings of the then participants;

(d) additional reserves which may reasonably be required because of variations in mortality, interest, and turnover experience.

In determining the employer contributions, the board shall include the amount which is required to amortize the cost of acquisition of land and the construction of an office building thereon over a period not exceeding 30 years, including interest at the rate of 6% per annum, less the estimated amount of rentals which may be received from the lease of surplus space in the building.

The contributions of employers from State appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirements as prescribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities.

* * * * *

(2) the total employer contribution shall be apportioned among the various funds of the State and other

employers, whether trust, federal, or other funds, in accordance with actuarial procedures approved by the board.

* * * * *

§ 15-156. *Obligations of state*

The payment of (a) the required State contributions, (b) all benefits granted under this system and (c) all expenses in connection with the administration and operation thereof are obligations of the State of Illinois to the extent specified in this Article. 1963, March 18, Laws 1963, p. 161, § 15-156.

§ 15-157. *Employee normal and additional contributions*

Each participating employee shall make normal contributions of 3½% September 1, 1949, 5% September 1, 1955, 6% to September 1, 1969, and 6½% thereafter, of each payment of earnings applicable to employment under this system on and after the date of becoming a participant. That fraction of a participant's total accumulated normal contributions, the numerator of which is equal to the number of years of service in excess of that which is required to qualify for the maximum retirement annuity, and the denominator of which is equal to the total service of the member, shall be considered as additional contributions. In computing the additional contributions, service shall include all service after August 31, 1941, and that service before September 1, 1941, for an employer which was covered by retirement plan prior to that date. The determination of the applicable maximum annuity and the adjustment in contributions required by this provision shall be made as of the date of the participant's retirement.

* * *

§ 15-173. *Board Powers and Duties: To cause actuarial analyses*

To cause a general investigation to be made by a competent actuary, at least every 5 years, of the retirement, disability, separation, mortality, interest, and employee earnings rates; to recommend, as a result of each such

investigation, the tables to be adopted for all required actuarial calculations; and to cause an annual determination to be made by a competent actuary of the liabilities and reserves of the system and an annual determination of the amount and distribution of the required employer contributions. 1963, March 18, Laws 1963, p. 161, § 15-173.

CHAPTER 108½ Illinois Revised Statutes § 16-101 *et. seq.* generally and in particular:

§ 16-152 *Contributions by members*

Each member shall make contributions to this system as follows:

(1) For service prior to attainment of age 70, and prior to July 1, 1972, normal contributions for creditable service prior to July 1, 1947 at the rate of 4%; and for creditable service after June 30, 1947, and until June 30, 1953 at the rate of 5%; and for creditable service after June 30, 1953, and until July 1, 1971 at the rate of 6%; and for creditable service after June 30, 1971 at the rate of 6½% of each payment of salary, as defined in Section 16-121, paid to him by any school district in this system or from state funds for service as a teacher.

* * *

§ 16-158. *Contributions by state and other employing units*

The State shall make contributions from the common school fund and other state funds to this system of the amounts required to meet the obligations of the State for the next fiscal year as provided in Sections 16-159 and 16-160. Such amounts shall be no less than 1.2 multiplied by members' contributions and be certified by the board to the Superintendent of Public Instruction and State Comptroller.

If employees are paid from special trust or federal funds which are administered by the employing unit, whether school district or other unit, the employing unit shall pay to the retirement system from such funds the full accruing

retirement costs based upon such service as determined by the Board of Trustees of the Teachers' Retirement System. Employer contributions, based on salary paid to members from federal funds, may be forwarded by the distributing agency of the State of Illinois to the Teachers' Retirement System prior to allocation, in an amount determined in accordance with guide lines established by such agency and the Teachers' Retirement System.

§ 16-159. *Estimate of amount needed*

Annually at its first regular meeting after June 30, the board shall estimate the amount necessary for the next fiscal year for expenses of administration and for meeting the other current obligations of the State and for meeting the other current obligations of the State and distribution thereof on an actuarial basis between costs applicable to teachers receiving earnings from school districts, and from State funds. Such amount shall be the amount estimated as sufficient to provide the amounts required for expense purposes for the coming fiscal year, and to provide the State costs for retirement allowances and benefits earned by the members during the fiscal year, including regular interest on any State obligation at the beginning of the year for the cost of benefits, retirement allowances and benefits earned in prior years and not previously provided by State contributions.

§ 16-162. *Obligations of state*

Payment of the required State contributions and of all pensions, annuities, retirement allowances, death benefits, refunds and other benefits granted under or assumed by this retirement system, and all expenses in connection with the administration and operation thereof, are obligations of the State. 1963, March 18, Laws 1963, p. 161 § 16-162.

§ 16-172. *Board powers and duties: To pay obligations and collect funds due*

To pay promptly all obligations that accrue under this Article and to see that all funds due the system are collected without unreasonable delay.

§ 16-176. *To designate an actuary and to adopt tables*

To designate an actuary who shall be its technical adviser on matters regarding the operation of the system.

At least once in each 4-year period the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system. Taking into account the result of such investigation, the board shall adopt such mortality, service, and other tables as it deems necessary.

CHAPTER 108½ Illinois Revised Statutes § 17-101 *et. seq.* generally and in particular:

§ 17-128. *Contributions from taxes and state appropriations and other sources*

In addition to the sums reserved and payable to the School District of the City under Section 18-7, 18-8 and 34-87 of "The School Code," approved March 18, 1961, as amended, the Board of Education annually shall demand and direct, and the City Council shall levy annually a tax at a rate of .132 on the dollar of the value as equalized or assessed by the Department of Local Government Affairs on all taxable property in the City or at a rate which, when extended, will produce for the year 1970 and the year 1971 the sum of $13,600,000, whichever is greater; and a tax at a rate of .162 for the year 1972; .182 for the year 1973; and .202 for the year 1974 and for each year thereafter. This tax shall be known as the Public School Teachers' Pension and Retirement Fund tax.

If teachers are paid from special trust or federal funds which are administered by the Board of Education, the Board of Education shall pay to the fund from such special trust or federal funds the full accruing pension costs based upon such services as determined by the Board of Trustees of the Fund.

§ 17-129. *Deficiency in fund*

If in any fiscal year the amounts accruing to the fund from taxes levied for the purpose of providing revenue for

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the fund, together with the amounts received by the fund under Section 34-87 of "The School Code" for such year, do not equal the total contributions made by the teachers for such year, or if the total income of the fund in any fiscal year from all sources is less than the total expenditures by the fund for such year, the Board of Education shall, in the next succeeding year, in addition to demanding and directing the annual tax levy for the fund, set apart and appropriate from monies derived or to be derived from its tax levy for educational purposes, a sum sufficient to remove such deficiency or deficiencies, and promptly pay such sum into the fund in order to restore any of the reserves of the fund that may have been so temporarily applied.

§ 17-130. *Participants' contributions by payroll deductions*

There shall be deducted from the salary of each teacher 6½% of his salary for service of disability retirement pension and ½ of 1% of salary for the annual increase in base pension.

In addition, there shall be deducted from the salary of each male teacher 1½% of his salary for survivors' and children's pensions.

* * * * *

STATEMENT OF THE CASE.

This case concerns the question of whether the members and beneficiaries of three pension trusts established by the State of Illinois have any recourse under the United States Constitution to safeguard the payment of their pensions by the State of Illinois. In 1973, a class action was filed in the Circuit Court of Cook County, Illinois, on behalf of the members and beneficiaries of three State pension trusts. The members and beneficiaries of the trusts consist in the main of teachers retired from or employed in, the primary, secondary and college level institutions of public education operated by the State of Illinois. The complaint sought mandatory and declaratory relief against the Governor, Comptroller and Treasurer of the State of Illinois.

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The complaint alleged a course of conduct on the part of the State of Illinois involving the failure of the State to make contributions to the pension trusts as mandated by the Pension Code. The amount of the State's deficiency to the three pension trusts as of the date the complaint was filed and as certified by the Illinois Court of Claims was in excess of 3.4 billion dollars.

The immediate focus of the complaint was the action of the Governor of Illinois in vetoing a legislative appropriation to the pension trusts. The complaint alleged that the Governor's action had the effect of increasing the actuarial insolvency of the pension trusts to an order of magnitude that jeopardized the prospect that the State of Illinois could generate sufficient revenues to meet its statutory and constitutional obligations to pay pensions and benefits to eligible members and beneficiaries of the pension trusts. The complaint alleged that the Governor's action impaired their contractual rights and prayed that the Court declare the action void.

The Circuit Court granted a motion to dismiss Petitioner's complaint. The Supreme Court of Illinois affirmed the Circuit Court's order of dismissal.

REASONS FOR GRANTING THE WRIT.

I. If Allowed to Stand the State Action at Issue Will Effectively Repeal Pension Rights Established by the Statutes and Constitution of the State of Illinois.

The veto action which is the immediate subject of Petitioner's complaint and the approval of it by the Illinois Supreme Court, constitutes nothing less than the effective repeal of the Illinois Constitutional and Statutory provisions which establish and define Petitioner's pension rights. There is no question presented here as to whether the veto action at issue constitutes an impairmen of Petitioner's rights. Petitioner's complaint alleging an impairment of their rights was disposed of by the state courts on

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a motion to dismiss. The Petition presents the question of whether under the existing constitutional and Statutory provisions of Illinois, contractual rights have been established which are afforded protection by Article I Section 10 of the United States Constitution. Petitioner's submit that despite the Illinois Supreme Court's decision sustaining the validity of the Governor's action, the mandate of the relevant constitutional and statutory provisions is sufficiently explicit to create a contractual interest as a matter of Federal Constitutional law.

The constitutional and statutory provisions which Petitioner's rely upon speak for themselves:

> ARTICLE XIII, Section 5, of the 1970 Illinois Constitution states as follows:
>
> > "Pension and Retirement Rights. Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The provisions of the Illinois Pension Code contain detailed and explicit directories relating to the computation of the amount of contributions required of the State. This point may be illustrated by reference to § 16-158 of the Pension Code, Illinois Revised Statutes, Chapter 108 § 16-158. This section states as follows:

> "The State shall make contributions from the common school fund and other state funds to this system of the amounts required to meet the obligations of the State for the next fiscal year as provided in Section 16-159 and 16-160. *Such amounts shall be no less than 1.2 multiplied by members' contributions and be certified by the board to the Superintendent of Public Instruction and State Comptroller.* (emphasis added)

In considering the scope of the protection afforded by Article I § 10 this Court observed in *Anderson* v. *Beard*, 303 U. S. 95 (1938) at 100 that:

> ". . . it is established that legislative enactments may contain provisions which, when accepted as a basis for action

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> by individuals became contracts between them and the State or its subdivisions within the protection of Art. I § 10."

It is difficult to conceive of a more explicit definition of the conditions of membership and the consequences thereof, than the referenced constitutional and statutory provisions. Certainly, a reasonably literate person contemplating accepting employment with the State of Illinois would read them to mean that he would contribute a certain amount, as would the State of Illinois, and that if there was a failure of performance, he would have enforceable contractual rights. This view would also be reinforced by the decision of the Court of Claims in *Illinois Education Association, et al.* v. *State of Illinois,* No. 6891.[1]

In this case a claim was filed against the State of Illinois alleging that the State had breached its contractual obligations to the members of the pension trusts by failing to make the requisite contributions to the pension systems. The claimants sought a certification by the court of the amount of the State's indebtedness to the pension systems.[2] The court issued an award granting the members' claim. In doing so, the court held that state contributions required by the relevant statutes constituted a vested and enforceable contractual obligation. The court stated its holding as follows:

> "The meaning and intent of the above statute seems clear and unequivocal. The legislature has created a *de facto* contract between the state and the members of the pension funds, an 'enforceable contractual relationship' according to Article XIII § 5 of the Illinois Constitution. The teachers, on their part, have performed their obligations thereunder to make contributions to the system from their salaries in specified amounts as required by § 16-152 and § 15-157 of the Acts. These contributions are automatically

1. Appendix B.

2. See Chapter 37 Illinois Revised Statutes §§ 439.20, 439.23, 439.24 providing jurisdiction to the Court of Claims to determine claims against the State of Illinois and to certify the amount of indebtedness to the General Assembly for payment.

> deducted from teachers salaries and are a condition of employment. The said contract remains executory on the part of the state." (emphasis supplied)

If the safeguards of Article I, § 10 are to have any meaning, the determination of what is a protected contract interest must be made on the basis of Federal constitutional criteria. The Illinois Supreme Court affirmed the dismissal of Petitioner's complaint without considering this question. The vitality of the safeguards afforded by Article I, § 10 depend upon this Court's acting to correct this omission.

II. Since Petitioner's Complaint Alleges a Present Impairment of Rights, Their Right to Pursue a Remedy for This Alleged Injury Cannot Be Deferred to a Later Date.

The vital importance of a pension to a retired person needs little elaboration. Few would dispute that if the State of Illinois were presently in default on its obligations, the impact upon the lives of the hundreds of thousands of State retirees who depend upon their pensions for material sustenance would be catastrophic. The Illinois Supreme Court took pains to point out the absence of this circumstance in its ruling. However such a consideration is immaterial to the legal sufficiency of Petitioner's complaint. It is precisely this consequence which Petitioners seek to forestall by enforcing the State's funding obligations. The prospect of the State's default cannot be dismissed out of hand as impossible of occurrence.

The financial resources of the State of Illinois are not unlimited. It cannot print money. Its financial resources are limited by its ability to levy taxes. Recurrent "taxpayer revolts" and the State current "fiscal crisis" make it apparent that this capacity has already approached its limits. Petitioners submit that the State of Illinois does not have the capacity to meet its pension obligation on the "pay as you go" basis unilaterally instituted by the Governor's action. The existing unfunded

liabilities and the rate of increase of new liabilities are simply too great to be met within the annual budget of a single year. Moreover, the order of magnitude of the amount of money involved is so large that remedial action must be initiated before default occurs. At the point of default, Petitioner's position will be little better than the position of a creditor trying to collect a debt owed by a bankrupt. During the Great Depression, many public pensioners learned that there was nothing magical about the fact that a pension system is State financed.

Without question, corrective action would impose some present discomfort upon State budget makers and possibly require the deferral of more popular programs. Nevertheless, the failure to act means that the duly enacted laws of Illinois will continue to be ignored with the very likely consequence that the State will not be able to meet its pension obligations. It is obviously easier as a political matter, to postpone harsh realities.

It has been often observed that the strongest feature of the American system is that it is a system based on laws and not men. Because of its institutional independence, the responsibility for assuring the efficacy of this principle has frequently fallen to the judiciary. The Illinois Supreme Court's willingness to ignore the clear mandate of the Illinois Constitution and its willingness to countenance the total abrogation of the State funding pension obligations under the Pension Code makes it probable that the Court was more concerned with the fiscal implications of its decision than with the rule of law. This Petition presents this Court with the opportunity to reaffirm the rule of law as to pension matters in the State of Illinois.

Respectfully submitted,

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APPENDIX A.

Docket Nos. 46753, 46763 cons.—Agenda 25—
January, 1975.

THE PEOPLE *ex rel.* ILLINOIS FEDERATION OF TEACHERS, AFT, AFL-CIO *et al.*, *Appellants*, v. GEORGE W. LINDBERG, Comptroller, *et al.*, Appellees.—American Association of University Professors *et al.*, Appellants. v. DANIEL WALKER, Governor, Appellee.

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

These consolidated appeals from the circuit court of Cook County involve class actions by members of several teachers' pension funds and others generally challenging the constitutional and statutory legality of Governor Daniel Walker's item reduction of certain appropriations made to these pension funds for the fiscal year 1974. The respective trial courts dismissed the complaints, and we granted direct appeal. 50 Ill. 2d R. 302(b).

In cause No. 46753 plaintiffs, the Illinois Federation of Teachers, and certain retired teachers and active teachers, filed a multicount complaint against George W. Lindberg (State Comptroller) and Alan J. Dixon (State Treasurer) seeking a writ of *mandamus* to compel payment of certain amounts to the respective teacher pension funds. The complaint further sought declaratory relief against Governor Walker's item appropriation reductions. The only matter appealed is the dismissal of the action seeking the declaratory relief.

The complaint in substance involved three teachers' pension plans which are described by plaintiffs as compulsory in nature. The first pension program was designated in the complaint as the "Downstate System." (Ill. Rev. Stat. 1973, ch. 108½, par. 16-101 *et seq.*) Plaintiffs alleged that the requisite statutory pension provisions required the State to make contributions to

the "Downstate System" of $205,600,000 for the fiscal year 1974 as was determined in a prior action before the Illinois Court of Claims. That court had concluded that a contract existed between the teachers and the State as evidenced by constitutional and statutory provisions hereinafter enumerated. The complaint further alleged that the State was indebted to the "Downstate System" for a total amount of nearly 2.15 billion dollars which had developed from past years of inadequate funding. Plaintiffs averred that in an effort to discharge this obligation the General Assembly appropriated the fiscal amount designated by the Court of Claims. However, the Governor in the exercise of his constitutionally delegated authority, reduced the amount to $96,000,000, and the General Assembly did not restore the original amount by a majority vote of each house of the legislature as constitutionally permitted. Ill. Const. (1970), art. IV, Sec. 9(d).

The second pension plan herein involved was termed the "Universities Systems" plan. (Ill. Rev. Stat. 1973, ch. 108½, par. 15-101 *et seq.*)The complaint alleged the Court of Claims had certified that the State's indebtedness to this pension fund for the 1974 fiscal year was $55,882,691 and that the past overall State indebtedness is .51 billion dollars. The General Assembly appropriated $66,908,000 for the "Universities Systems" fund, but this amount was reduced by the Governor to $20,190,000. The General Assembly failed to restore the amount by which the appropriation had been reduced.

The third pension plan, which was not involved before the Court of Claims, was described in the complaint as the "Chicago Fund." (Ill. Rev. Stat. 1973, ch. 108½, par. 17-101 *et seq.*) The complaint alleged that the State debt to this plan for fiscal year 1974 was $23,666,799 and the past indebtedness totalled .84 billion dollars. The General Assembly, to meet the current obligations and to amortize past debt, appropriated $57,707,000 for the fiscal year, which the Governor reduced to $27,000,000. The General Assembly failed to restore the reduced amount.

Cause No. 46763 was a separate class action filed on behalf of various university teaching associations and certain members and beneficiaries of the "Universities Systems" pension plan. These plaintiffs sought the same declaratory relief as requested in cause No. 46753. This complaint, however, with greater specificity set forth the General Assembly appropriations to this pension fund. The complaint alleged the appropriation for current expenditures was $54,759,100 and this was reduced to $20,190,000 by the Governor. A separate appropriation bill for $12,138,599 was designed to amortize accrued unfunded liability, but this bill was vetoed.

It was averred that the Governor's reason for reducing the pension appropriation "was consistent with the historically sound system of the Federal Social Security System." No allegation was advanced in either complaint that those presently entitled to receive pension benefits were not receiving the necessary monies.

The possibility exists that criticism could arise due to the fact that members of this court might be affected by the decision due to our participation in the judicial retirement pension provisions of the Pension Code. (Ill. Rev. Stat. 1973, ch. 108½, par. 18-101 *et seq.*) But in an analogous case the United States Supremes Court stated:

> "* * * Because of the individual relation of the members of this court to the question * * * we cannot but regret that its solution falls to us; and this although each member has been paying the tax in respect of his salary voluntarily and in regular course. But jurisdiction of the present case cannot be declined or renounced. The plaintiff was entitled by law to invoke our decision on the question as respects his own compensation, in which no other judge can have any direct personal interest; and there was no other appellate tribunal to which under the law he could go." *Evans* v. *Gore* (1920), 253 U. S. 245, 247-48, 64 L. Ed. 887, 40 S. Ct. 550.

In asserting that the Governor's action exceeded his constitutional authority all plaintiffs rely on section 5 of article XIII

of the 1970 Constitution, which they contend was adopted precisely to forestall the possible insolvency of the pension system. This provision reads:

> "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

They argue this provision creates a contractual relationship between the State and participants in the pension systems which the Governor may not infringe by use of his power to reduce or veto appropriations.

In *Peters* v. *City of Springfield* (1974), 57 Ill. 2d 142, we had occasion to consider this provision. There a home-rule municipality lowered the retirement age for its firemen, which, under the appropriate section of the Pension Code (Ill. Rev. Stat. 1971, ch. 108½, par. 4-109), would probably decrease the pension amount to be received. In upholding the action of the municipality we examined the constitutional-convention debates pertaining to this provision and concluded "that the purpose and intent of the constitutional provision was to insure that pension rights of public employees which had been earned should not be 'diminished or impaired' but that it was not intended, and did not serve, to prevent the defendant City from reducing the maximum retirement age, even though the reduction might affect the pensions which plaintiffs would ultimately have received." 57 Ill. 2d 142, 152.

We have again examined the debates concerning the application of this provision to the necessity of providing certain funding to the various pension plans during a particular fiscal period. As recognized in *Peters,* the tenor of the debates was primarily concerned with assuring members of pension plans that they would receive the money due them at the time of their retirement. The question of the specific funding of compulsory pension programs was discussed, and Delgate Kinney, a cosponsor

of the provision, stated: "It was not intended to require 100 per cent funding or 50 per cent or 30 per cent funding or get into any of those problems, aside from the very slim area where a court might judicially determine that imminent bankruptcy would really be impairment." (4 Record of Proceedings, Sixth Illinois Constitutional Convention 2929; also see 4 Proceedings 2926.) Comparable interpretations of the provision's effect as applied to these appeals were echoed by Delegates Lyons, Whalen (4 Proceedings 2929) and President Witwer (4 Proceedings 2932). While Delegate Green expressed the opinion that the legislature should adequately fund the pension systems in accordance with the actuarial principles (4 Proceedings 2925, 2931), the convention debates do not establish the intent to constitutionally require a specific level of pension appropriations during a fiscal period. There is also no basis from which it might be argued that the provision was intended to restrict the Governor's constitutional authority to reduce or veto a pension appropriation measure. And it cannot be said that under the circumstances this constitutional provision affords plaintiffs the right to judicially circumvent the Governor's actions taken herein.

Plaintiffs also argue that these actions were commenced in order to secure the performance of the State's statutory funding obligations. It is the plaintiffs' position that the pertinent provisions of the Pension Code establish and define a contractual relationship between themselves and the State which obligates the State to fulfill its funding commitments. Plaintiffs argue that the respective pension statutes do not contain provisions that make the amount of State contributions subject to the political or fiscal exigencies of the Governor's budgetary priorities. They maintain that the clear intent of the statutes is to place the funding of the pension trusts upon a solid actuarial basis. Moreover, they conclude that the State's obligations were established by prior legislative action and the Governor's conduct, in effect, improperly operated to nullify pre-existing law.

Plaintiffs have strongly argued that this court adopt the "contract view" relating to this form of public-employee pension plan and have cited numerous cases from other jurisdictions in support of their position. As noted in the *Opinion of the Justices* (Mass. 1973), 303 N. E. 2d 320, 326, the character of public employee pension programs has not been definitely established (see also Cohn, *Public Employee Retirement Plans—The Nature of Employees' Rights,* 1968 U. Ill. L. F. 32) and an attempt to precisely define the nature of the relationship has been rejected (*Spina* v. *Consolidated Police and Firemen's Pension Fund Com.* (1964), 41 N. J. 391, 197 A. 2d 169).

We must determine whether the participants or their beneficiaries under the respective sections of the Pension Code now at issue enjoy a present contractual right to enforce a specific level of funding to the plans. As previously noted, the pension systems involved in these consolidated appeals are compulsory in nature. (Ill. Rev. Stat. 1973, ch. 108½, pars. 15-134, 16-123(1), 17-130; see also *Gorham* v. *Board of Trustees of Teachers' Retirement System* (1964), 27 Ill. 2d 593, 596.) In *Bergin* v. *Board of Trustees of Teachers' Retirement System* (1964), 31 Ill. 2d 566, 574, we stated: "It has long been settled that compulsory participation in a statutory pension plan confers no vested rights, thus permitting amendment, change or repeal as the legislature sees fit."

Each teacher pension plan involved in this appeal is funded from teachers' compulsory contributions, State monies and investment income earned from these funds. The respective statutes each set forth the contributions requirements of their respective members. (Ill. Rev. Stat. 1973, ch. 108½, pars. 15-157, 16-152, 17-130.) To complement these funds the respective statutes contain provisions for employer contributions. (Ill. Rev. Stat. 1973, ch. 108½, pars. 15-155, 16-158, 17-127 and 17-128.) The complaint in cause No. 46753 alleges, and defendants do not dispute, that State contributions to these pension

plans are obligations of the State (Ill. Rev. Stat. 1973, ch. 108½, pars. 15-156, 16-162).

In asserting their claim of a presently enforceable contractual right to a financially sound retirement system plaintiffs in cause No. 46753 claim that the statutory provisions require State contributions for the pension systems to be made on an actuarial basis. In particular they direct our attention to the "Downstate System" providing that the amount of State contributions "shall be no less than 1.2 multiplied by members' contributions * * *." Ill. Rev. Stat. 1973, ch. 108½, par. 16-158.

Plaintiffs in cause No. 46763 involving the "Universities Systems" argue that section 15-155 reflects the contractual concept and mandates certain appropriations to be made. In support of their position they cite a 1967 amendment to section 15-155 which reads as follows:

> "The contributions of employers from State appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirements as prescribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities." Laws of 1967, at 4216-4217.

They construe the term "current service costs" to mean the actuarial requirements for contributions for the fiscal year necessary to enable the "Universities Systems" to pay the pensions of current employees as they retire.

We must reject the statutory basis upon which plaintiffs seek to establish a contractual relationship. Prior to the enactment of the Pension Code in 1963 and during a period of time when the decisions of this court clearly established no vested right in compulsory statutory pension plans for public employees, the predecessor provisions of the respective pension statutes were similarly drafted. Prior statutes reflected that State contributions were an obligation of the State. (Ill. Rev. Stat. 1961, ch. 122, par. 25-77; ch. 144, par. 104.) Before the adoption of the

present Pension Code, the "Downstate System" also contained the provision relating to State contributions being set in an amount of 1.2 in excess of those contributed by the employees. (Ill. Rev. Stat. 1961, ch. 122, par. 25-67.) In addition, the statutory basis for estimating the amount of State contributions needed for a fiscal year in the "Downstate System" has remained the same. Compare Ill. Rev. Stat. 1973, ch. 108½, par. 16-159, with Ill. Rev. Stat. 1961, ch. 122, par. 25-68.

The 1967 amendment to section 15-155 in the "Universities Systems" does not evidence the legislative intent ascribed to that revision by certain plaintiffs. We perceive no attempt to establish a vested contractual relationship by this revision, and there would appear to be no significant change in this regard from the predecessor to section 15-155. See Ill. Rev. Stat. 1961, ch. 144, par. 86.

In summary, had the legislature intended to establish a present contractual relationship when the Pension Code was enacted in 1963, thereby affording plaintiffs the possible statutory basis to challenge necessary appropriations, it would have been a simple matter to so state. (*E.g.*, see *Opinion of the Justices* (Mass. 1973), 303 N. E. 2d 320, 324.) Rather we are of the opinion that the provisions upon which plaintiffs rely to establish the contractual relationship were merely engrafted from prior pension laws which had been construed as not conferring a vested right.

Having found no presently existing contractual right created by statute upon which to base a challenge to appropriations reductions or item veto, we need not consider the implication of whether the Governor's action infringed the Federal or State constitutional guarantees against the impairment of contracts. U. S. Const., art. I, sec. 10; Ill. Const. (1970), art. I, sec. 16.

With regard to plaintiffs' claim that the Governor's action in effect resulted in the nullification of existing pension statutes, it is to be noted that section 9(d) of article IV of the 1970

Constitution plainly provides that "The Governor *may reduce or veto any item of appropriations* in a bill presented to him." (Emphasis added.) If an item is vetoed, the General Assembly, by the three-fifths vote of each house, may override the veto. (Ill. Const. (1970), art. IV, sec. 9(c).) If an appropriation is reduced in amount, the amount may be restored by a majority vote of each house of the General Assembly. Ill. Const. (1970), art. IV, sec. 9(d).

While plaintiffs have cited numerous cases to the effect that a court may declare an executive veto void, the vast majority of those decisions involve situations where a governor reduced an appropriation item rather than vetoing it, thereby exceeding his authority delegated under the respective constitutional provisions which in most instances granted the authority only to veto an item. (*E.g., Fergus* v. *Russel* (1915), 270 Ill. 304; *Mills* v. *Porter* (1924), 69 Mont. 325, 222 P. 428.) This result would not occur under our present State Constitution.

Another case relied upon is *State ex rel. Nunez* v. *Baynard* (La. App. 1943), 15 So. 2d 659. The decision is inapplicable, for the amount of the appropriation vetoed by the Governor was specifically mandated by that State's constitution.

The only resembling case cited by plaintiffs is *Fitzsimmons* v. *Leon* (1st Cir. 1944), 141 F. 2d 886. There a governmental official's salary had been previously established by statute. In subsequent appropriation bills the Governor lessened the statutorily specified amount by utilization of his authority to reduce appropriations. The court's rationale, as relevant to these appeals, seems to have been resolved on its determination that the Governor's action was not the mere reduction of an appropriation bill, as here, but rather an attempt to modify general legislation.

We do not find *Leon* to be persuasive for the proposition advanced by plaintiffs. As related to these appeals, the court in *Leon* premised its constitutional basis upon authorities which do

not support its conclusion. In *Bengzon* v. *Secretary of Justice* (1936), 299 U. S. 410, 81 L. Ed. 312, 57 S. Ct. 252, the item which was vetoed was not even construed as an appropriation measure. In the *Opinion of the Justices* (1936), 294 Mass. 616, 2 N. E. 2d 789, the court was presented with a situation wherein the Governor transferred an appropriation to a separate fund, thereby transgressing his constitutional authority.

But even if *Leon* is to be considered as affording a Federal constitutional basis for plaintiffs' challenge, this court is not bound by that case. (*People* v. *Stansberry* (1971), 47 Ill. 2d 541, 544.) Rather we adhere to this court's prior decision in *People ex rel. Millner* v. *Russel* (1924), 311 Ill. 96. In *Millner* the relator was appointed an assistant Attorney General. A previously enacted statute fixed his salary at a certain amount, and the necessary funds were appropriated by the General Assembly. The Governor vetoed this salary appropriation, and the relator filed an original action for *mandamus* to compel payment of his statutorily set salary. The 1870 Constitution (art. V, sec. 16) empowered the Governor to veto an appropriation item. The court sustained the Governor's action, stating that the Constitution made no distinction in the type of salary appropriation bill presented and that the Governor could therefore exercise his constitutionally delegated veto power. Similarly, under the circumstances presented in these appeals, we conclude that the Governor could properly utilize his veto or item-reduction authority over the pension appropriation bills.

Plaintiffs have asserted that the respective pension systems are inadequately funded. The question of the specific fiscal appropriations necessary to meet these deficiencies is one which, at this time, should be directed to the legislature.

Accordingly, the judgments of the circuit court of Cook County are affirmed.

Judgments affirmed.

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APPENDIX B.

IN THE COURT OF CLAIMS
of the State of Illinois.

ILLINOIS EDUCATION ASSOCIATION, et al.,
Claimants,
vs.
STATE OF ILLINOIS,
Respondent.
No. 6891.

OPINION.

LAWRENCE JAY WEINER, of Chicago, Attorney for the Claimants.

WILLIAM J. SCOTT, Attorney General; (SAUL R. WEXLER, Assistant Attorney General, of counsel) for the Respondent.

JUDGE BURKS delivered the opinion of the court:

This case was filed September 12, 1972, by the Illinois Education Association, an Illinois not-for-profit Corporation, and various named individuals, as individuals, and on behalf of all other participants, members, annuitants, and beneficiaries of three specific pension funds: (1) the Teachers Retirement System of the State of Illinois; (2) the State Universities Retirement System, and (3) the Public School Teachers Pension and Retirement Fund of Chicago.

Claimants' suit is based upon undisputed allegations that the State of Illinois, respondent, has failed to make its contributions to the aforesaid pension systems as required by law (Ill. Rev.

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Stat., 1971 Ch. 108½, § 15-101 et seq., § 16-101 et seq., and § 17-101 et seq.); and that such failure on the part of the respondent is a breach of the state's contractual obligations to the members and beneficiaries of the pension systems, said contractual obligations being established by statute and by the 1970 Illinois Constitution, Art. XIII, Sec. 5.

Claimants seek an order or decree from this court determining the state's liability as to their claim and rendering an award, or judgment, consistent with its findings.

The petition invokes the court's jurisdiction under Sections 8a and 8b of the Court of Claims Act, (Ill. Rev. Stat., 1971, Ch. 37, § 439.8 a and b).

This case is one of first impression in Illinois. Hence we have deliberated cautiously and at length on the question of the jurisdiction of this court over the subject matter of this claim. At our request, both parties have favored us with exhaustive briefs on the question of jurisdiction. Oral argument was heard by the court en banc on March 2, 1973, primarily on the question of jurisdiction, a question on which we now express our comments and conclusion.

The legislature created this court and granted it exclusive jurisdiction to hear and determine all claims against the State of Illinois. As set forth in § 8 of the Court of Claims Act, the court's exclusive jurisdiction includes:

(a) All claims against the State founded upon any *law* of the State of Illinois . . . and

(b) All claims against the State founded upon any *contract* entered into with the State of Illinois.

Since this case is founded upon both (a) a law of this state and (b) an alleged contract with this state, the Court of Claims has exclusive jurisdiction *if* the case is, in fact, "a *claim* against the State, cognizable by the court" as contemplated by the following § 23 of the Court of Claims Act:

> "It is the policy of the General Assembly to make no appropriation to pay any *claim against the State, cognizable by the court,* unless an award therefor has been made by the court." [Ill. Rev. Stat., Ch. 37 "Courts" § 439.23.] (Emphasis added.)

Is this a *claim* against the state within the meaning of the above § 23? If so, it differs from all other causes of action under our jurisdiction. In all other claims that have come before us, a claimant seeking a money judgment must prove actual damages measurable in financial loss.

For example, a claimant may be awarded damages for personal injuries caused by the state's negligence in maintaining a stop sign at a highway intersection. However, a citizen who merely sees the potential danger in a downed stop sign does not have a "claim" against the state unless he suffers some actual damage caused by that situation and proves that the state's negligence was the proximate cause of his financial loss.

In the case before us, the complaint does not charge that any teacher or member has ever suffered any financial damage or failed to receive full pension benefits as provided by law.

We first viewed the situation as being somewhat analogous to the federal Social Security System. Last year Congress abandoned all pretense of an "actuarially sound" trust fund for Social Security and provided that benefits would be financed by each year's social security tax from wage earners. Yet, as stated in a recent article by E. L. Dale, Jr., "No one's benefits—present or future—are in jeopardy. Social Security payments will stop only on the day that the U. S. government stops paying its bills."*

The court felt that the same conclusion would apply to any pension or retirement system created by the State of Illinois so far as the payment of all benefits is concerned. However,

* "Congress Gets a Grip on Social Security" by Edwin L. Dale, Jr., member of the New York Times Washington Bureau, Chicago Tribune, January 21, 1973. Sec. 2, page 1.

the power of the Congress to change the social security law is apparently without any such constitutional limitation as now seems to be imposed on the Illinois Legislature by our 1970 Constitution in Article XIII, § 5:

> "PENSION AND RETIREMENT RIGHTS.
>
> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The above section was adopted by the *Sixth Illinois Constitutional Convention* on July 21, 1970. After reading the verbatim transcript of that Convention's debate on the adoption of this section, we must conclude that this constitutional mandate was intended to establish the enforceability of the contractual rights of the claimants in this action. This provision is much more explicit and affirmative than the general language of Art. I, Sec. 16, which merely forbids any law "impairing the obligation of contracts".

The same Article XIII of the 1970 Constitution which declares the claimants have *enforceable* contractual rights, also delegates to the legislature the authority to prescribe the manner and form in which claimants may seek to enforce their rights against the state by a court procedure. Article XIII, Sec. 4 (effective January 1, 1972) abolished sovereign immunity in this state "except as the General Assembly shall provide by law". The General Assembly responded by enacting P. A. 77-1776 (also effective January 1, 1972) which re-enacted the Court of Claims Act: (Ill. Rev. Stat., 1972 Supp., Ch. 127 § 801)

> "Except as provided in . . . [the Court of Claims Act] . . . the State of Illinois shall not be made a defendant or party in any court."

The legislature has thus declared that the only court room door which is open to any claimant having a cause of action

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against the State of Illinois is the door of the Court of Claims. This conclusion was firmly supported by a recent decision of the Illinois Appellate Court in *Chicago Welfare Rights Org.* v. *Weaver,* 5 Ill. App. 3d (1972) 655. The Supreme Court of Illinois has previously upheld the exclusive jurisdiction of this court in certain causes of action against the state. Its most recent pronouncement is stated in *Edelen* v. *Hogsett,* 44 Ill. 2d (1970) 215.

It seems clear, therefore, that this court's jurisdiction has been properly invoked by the claimants in this case. The Attorney General confirms this in a brief filed on behalf of the respondent.

It seems equally clear that, since no other court, state or federal, has the requisite jurisdiction over this matter, this court must exercise its jurisdiction in this cause. Otherwise the claimants would be deprived of their constitutional rights under Article I, Sec. 12 of our 1970 Constitution which states that "every person *shall* find a certain remedy in the laws for all injuries and wrongs . . ." (The 1870 Bill of Rights counterpart merely stated that "every person *ought* to find a remedy in the law . . .") We turn then to such remedy as may be available to the claimants in this suit.

There are no significant issues of law or fact which are in dispute in this matter. At the time oral argument was heard by the court on March 2, 1973, the parties filed stipulations as to the state's unfunded statutory obligations to the Teachers and the Universities Retirement Systems. Still pending, and apparently unresolved by the parties hereto, is the status of the Chicago Teachers Fund. Accordingly, this opinion is confined to the Downstate and University Teachers Funds.

These obligations, founded upon statute, are clearly set forth in Ill. Rev. Stat., 1971, Ch. 108½:

> Section 15-155 provides: *Employer contributions. The State of Illinois shall make contributions by biennial ap-*

propriations of the amounts which, together with the other contributions of employer out of trust, federal, and other funds under their control, the contributions of the participating employees, income from investments, and other income of this system, will be necessary to meet the costs of maintaining and administering this System:

(1) the total amount of the employer contribution for any fiscal year shall be the sum of the amounts estimated to be required on the basis of the actuarial tables adopted by the board and the prescribed rate of interest to meet the disability benefits, additional death benefits, the employers' portion of the cost of all annuities and survivors insurance benefits and expenses of administration expected to be paid during the year and to result in the accumulation of assets at the end of the year equal to the sum of the following:

(a) the liability for all annuities expected to be paid to the then annuitants, and the survivors insurance benefits expected to be paid;

(b) the liability for all accumulated additional, normal, and survivors insurance contributions of the then participants;

(c) the single premium reserve required for the employers' portion of the cost of all annuities which have then accrued because of previous earnings of the then participants;

(d) additional reserves which may reasonably be required because of variations in mortality, interest, and turnover experience.

In determining the employer contributions, the board shall include the amount which is required to amortize the cost of acquisition of land and the construction of an office building thereon over a period not exceeding 30 years, including interest at the rate of 6% per annum, less the estimated amount of rentals which may be received from the lease of surplus space in the building.

The contributions of employers from State appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirements as pre-

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scribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities.

If an employee is paid from trust or federal funds, the employer shall pay to the board contributions from these funds which are required to fund fully the current service costs in accordance with the actuarial reserve requirements as prescribed in paragraph (1) of this Section. Funds of the alumni associations, foundations, and athletic associations which are affiliated with the universities included as employers under this Article and other employers which do not receive State appropriations are considered as trust funds for the purpose of this Article.

(2) the total employer contribution shall be apportioned among the various funds of the State and other employers, whether trust, federal, or other funds, in accordance with actuarial procedures approved by the board.

The contributions of the State of Illinois for employers which receive appropriations from the State for personal services shall be payable from appropriations made to the employers. The contributions for Class I junior colleges shall be payable solely from appropriations to the Illinois Junior College Board for employer contributions. Class I junior colleges making employer contributions prior to the effective date of this amendatory Act of 1967 shall be reimbursed by the Illinois Junior College Board upon the filing of a claim for reimbursement in the manner prescribed by the Board. The Auditor of Public Accounts shall draw warrants payable to the treasurer of the system upon proper certification by the system, by the Illinois Junior College Board or by the employer in accordance with the laws making such appropriation.

Section 15-156 provides: *Obligations of state. The payment of (a) the required State contributions,* (b) all benefits granted under this system and (c) all expenses in connection with the administration and operation thereof *are obligations of the State of Illinois* to the extent specified in this Article.

Section 16-158 provides: *Contributions by state and other employing units. The State shall make contributions* from the common school fund and other state funds to this system of the *amounts required to meet the obligations of*

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the State for the next fiscal year as provided in Sections 16-159 and 16-160. Such amounts shall be no less than 1.2 multiplied by members' contributions and be certified by the board to the Superintendent of Public Instruction and Auditor of Public Accounts.

If employees are paid from special trust or federal funds which are administered by the employing unit, whether school district or other unit, the employing unit shall pay to the retirement system from such funds the full accruing retirement costs based upon such service as determined by the Board of Trustees of the Teachers' Retirement System.

Section 16-162 provides: *Obligations of state. Payment of the required State contributions* and of all pensions, annuities, retirement allowances, death benefits, refunds and other benefits granted under or assumed by this retirement system, and all expenses in connection with the administration and operation thereof, *are obligations of the State.* [Emphasis supplied]

The meaning and intent of the above statute seems clear and unequivocal. The legislature has created a *de facto* contract between the state and the members of the pension funds, an "enforceable contractual relationship" according to Article XIII § 5 of the Illinois Constitution. The teachers, on their part, have performed their obligations thereunder to make contributions to the system from their salaries in specified amounts as required by § 16-152 and § 15-157 of the Acts. These contributions are automatically deducted from teachers salaries and are a condition of employment. The said contract remains executory on the part of the state.

Both parties to this action, in their briefs and oral arguments, agreed that this court cannot compel the legislature to make any appropriations. *Fergus* v. *Russell,* 277 Ill. 20 (1917). Nor, according to the briefs filed by the parties in this cause, could any other court force such action on the legislature by decision, injunction or mandamus. To do so, they have suggested, would be violative of the doctrine of the separation of powers. We are reminded of a historic decision of the U. S. Supreme Court in

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1832 which enraged President Andrew Jackson, *Worchester* v. *Georgia*, 6 Peters 561-63. The President is reported to have said, "John Marshall has made his decision;—*now let him enforce it!*"

As we have said, this case is one of first impression in Illinois. In the states of Washington, California, Arizona and Pennsylvania, we find cases similar to the matter before us in which the courts have ruled that public pension rights are contractually enforceable against municipalities. *Bakenhus* v. *Seattle*, 48 Wn. 2d 695, 296 2d 536 (1956); *State ex rel. Weaver* v. *Evans*, Supreme Court Cause No. 41851 (1972); *Allen* v. *Long Beach*, 45 Cal. (2d) 128 (1955); *Lyon* v. *Flournoy*, 76 Cal. Rep. 869 (1969); *Yeazell* v. *Copins*, 98 Ariz. 109 (1965); *Hickey* v. *Pittsburgh Pension Board*, 378 Pa. 300, 106 A. 2d 233, 52 ALR 2d 430 (1950).

Perhaps the leading case from other jurisdictions, and the only case we have noticed in which a writ of mandamus issued against a legislative body, was *Dombrowski* v. *City of Philadelphia*, 431 Pa. 199, 245 A. 2d 238 (1968).

In *Dombrowski* the Supreme Court of Pennsylvania affirmed the issuance of a writ of mandamus (under a liberal Mandamus Act* and where no Court of Claims existed) compelling the city to make appropriations to its retirement system assuring the actuarial soundness required by its Home Rule Charter. Citing a long line of Pennsylvania authority, the court noted that the entire theory of vested rights in public retirement benefits is a direct outgrowth of the contractual concept of pensions. The court went on to find that the relators' contractual relationship with the city stemmed from a duty imposed by law, being the creation and administration of a retirement system, and that as a party to the contract he had standing to seek the writ (245 A. 2d 238, 245). That the failure of the city to provide contribu-

* The Pennsylvania Mandamus Act provided (Section 3, 12 P. S. §1914): "The writ of mandamus may issue upon the application of any person beneficially interested."

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tions adequate to keep the retirement fund on an actuarially sound basis resulted in impairment of a contract obligation was clear:

> "In essence, then, Dombrowski was attempting to assure himself and all other members of the Philadelphia municipal retirement system that sufficient funds would be present to meet his and others' retirement payments. Part of his contract with the city was a promise made by the city, in its Home Rule Charter, that the retirement system would be actuarilly sound. The court below found, a finding not here disputed, that the city had not kept its promise. *Dombrowski is thus suffering a present impairment of his contractual rights and thus and immediate injury.*" Id., 246-47 (emphasis supplied)

The court was not impressed with the suggestion that if in due course the relator did not receive his retirement benefits he would sue the city for breach of contract, enter judgment and execute upon city property, the duty to pay the pension being an obligation of the municipality. Nor was his injury by virtue of the failure to provide reserve funding deemed less immediate because there was a prospective future cause of action for breach. Concluding that the suit was properly brought in the individual capacity of the relator as a not yet retired member of the retirement system, the court held:

> "It is Dombrowski's contractual relationship with the city that is impaired by the city's failure to comply with its own Home Rule Charter and this immediate impairment supports his standings; that appellee might be able through judgment and execution to obtain the funds due him in 1972 does not prevent him from asserting in 1968 a present impairment of contractual rights." Id., 248.

This Pennsylvania case of *Dombrowski* could not be followed in Illinois for several obvious reasons. There is no procedure for mandamus against the state legislature, and certainly not in this court which has exclusive jurisdiction over the subject matter of this claim. Although, as suggested in *Dombrowski,* there is a present impairment of claimant's contractual rights,

claimants have shown no actual damages, measurable in dollars, which could be a reasonable basis for an award by this court. We recognize, of course, the desirability of full funding, accruing interest to accumulated reserves, and the avoidance of crushing future unfunded liabilities.

As previously stated, claimants' suit seeks an award by this court pursuant to § 23 of the Court of Claims Act. In so doing, they are employing and exhausting their statutory remedies, and fortifying their argument on the constitutional issues. Claimants may be mindful of the following statement by the Supreme Court in *Edelen* v. *Hogsett*, 44 Ill. 2d 215 (1969) at page 219:

> "Were it not for the existence of the Court of Claims Act, appellants' argument might be of some substance, but the existence of that legislation, modifying the State's immunity from suit, and the failure of the appellants to seek remedy thereunder, in our judgment renders their constitutional argument inappropriate and not cognizable by this court in the posture in which it is here presented."

We are impressed with the diligence of counsel for both sides in their efforts to work out a practical solution to this difficult problem, and exhibiting, as they have, a sympathetic understanding of the impact of a payment for the full amount of the state's liability to the respective funds. As of this date the full amount apparently would be in excess of *two billion six hundred million dollars.* The parties have proposed to amortize said liability over a 50 year period. While the said proposal has been approved as actuarially sound, we cannot enter an award based thereon. We feel that the finding of this court must be in the nature of a declaratory judgment, pursuant to Sec. 57.1 of the Civil Practice Act, a declaration of claimants' rights as we see them, and leaving the amount of any consequential relief to the discretion of the legislature.

It is the opinion of this court that the members, annuitants, and beneficiaries of the Teachers Retirement System of the State of Illinois, and of the State Universities Retirement Sys-

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tem are parties to a constitutional and statutory contract with the State of Illinois; that the 1970 Constitution describes their rights thereunder as enforceable, and that the State of Illinois has failed to meet its statutory obligations regarding its indebtedness to these two funds as follows:

Teachers Retirement System of the State of Illinois		
1.	Due as of June 30, 1971:	$1,748,375,624.00
2.	Due as of June 30, 1972:	88,179,200.00
3.	Due as of June 30, 1973:	105,820,000.00
4.	Due for Fiscal Years 1974:	205,600,000.00
		$2,147,974,824.00
State Universities Retirement System		
1.	Due as of August 31, 1971:	$ 311,336,000.00
2.	Due as of August 31, 1972:	90,085,722.00
3.	Due as of August 31, 1973:	53,065,507.00
4.	Due for Fiscal Year 1974:	55,882,691.00
		$ 510,369,920.00

Finally, we take judicial notice of the fact that there are now bills pending in the General Assembly which appropriate monies to the Teachers Retirement System as suggested in the stipulation filed herein on March 2, 1973. We also take notice of published reports to the effect that the Governor has now proposed a full scale examination of all public pension programs with a view toward eventually working out an equitable approach.

ENTER:

/s/ MARION E. BURKS,
Judge, Illinois Court of Claims.

Concur:

/s/ MAURICE PERKIN, *C. J.*,
/s/ S. J. HOHLEM, *C. J.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1604

THE PEOPLE OF THE STATE OF ILLINOIS ex rel. Illinois Federation of Teachers, AFT, AFL-CIO; OSCAR WEIL, its representative; WILLIAM STEWARD, SR., individually and as representative of a class; GENE ALEXANDER; HELEN BJORKMAN; LOUISA GRISHAM, individually and as representative of a class; ANN WAHL; NORMAN G. SWENSON, individually and as representative of a class; ARTHUR C. DONART; FRANK BANKS; HOWARD WILCOX, individually and as representative of a class; BERNICE HAYES; ALICE WEATHERWAX, individually and as representative of a class; and DOROTHY BURGESS, individually and as representative of a class,

Petitioners,

vs.

GEORGE W. LINDBERG, as Comptroller of the State of Illinois, ALAN J. DIXON, as Treasurer of the State of Illinois, and DANIEL J. WALKER, as Governor of the State of Illinois,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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DANIEL WALKER, Governor of the State of Illinois, GEORGE W. LINDBERG, Comptroller, and ALLEN J. DIXON, Treasurer, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, file this brief in opposition to the Petition for Writ of Certiorari to the Supreme Court of Illinois.

OPINION BELOW

The decision of the Illinois Supreme Court, reported at 60 Ill. 2d 266, 326 N.E. 2d 749 (1975), affirms two separate unreported trial court rulings of the Circuit Court of Cook County, Illinois: No. 73 CH 5722, included herein as Appendix A; and No. 73 L 18562, included herein as Appendix B.

JURISDICTION

The jurisdiction of this Court has heretofore been urged, and denied upon the identical facts and statutes and on behalf of the identical class of persons as alleged in the case at bar, in *Illinois Education Assoc., et al.* v. *Walker,* docketed as 73-1586, cert. denied 417 U.S. 947, 94 S. Ct. 3072 (June 10, 1974).

QUESTIONS PRESENTED

Whether the judicial branch has power to override the executive and legislative branches in an exercise of the veto and reduction power provided in the Illinois Constitution.

CONSTITUTION AND STATUTES INVOLVED

United States Constitution

Tenth Amendment:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'

United States Constitution

Eleventh Amendment:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

1970 Illinois Constitution

Article II, Section 1:

> "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

1970 Illinois Constitution

Article IV, Section 9(b):

> "(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. . . ."
>
> * * * *
>
> "(d) The Governor may reduce or veto any item of appropriation in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same man-

ner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill, except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount."

1970 Illinois Constitution

Article VIII, Section 2(a):

"The Governor shall prepare and submit to the General Assembly, at a time prescribed by law, a State budget for the ensuing fiscal year. The budget shall set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, and a plan for expenditures and obligations during the fiscal year of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State, but not of units of local government or school districts. The budget shall also set forth the indebtedness and contingent liabilities of the State and such other information as may be required by law. Proposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget."

1970 Illinois Constitution

Article VIII, Section 2(b):

"The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year."

Civil Practice Act, § 57.1(1)

Ill. Rev. Stats. 1973, Ch. 110, § 57.1(1):

"* * * *

In no event shall the Court entertain any action or proceeding for a declaratory judgment, decree or order involving any political question where the defendant is a State officer whose election is provided for by the Constitution; . . ."

STATEMENT OF THE CASE

The 78th Illinois General Assembly presented the Governor various appropriation bills providing funding for the State teachers' pension and retirement system.

Within the time provided, and in the manner prescribed by Article IV, Section 9(b), (d) of the 1970 Illinois Constitution, the Governor vetoed and reduced items in HB 918, HB 1504, SB 183, SB 381, SB 443, SB 449, SB 478, SB 488, SB 503, SB 698 and SB 1178, and returned the bills to the houses in which they originated.

The vetoed and reduced appropriation bills were not passed or restored to their original amount by the General Assembly.

Petitioners, on behalf of the class of beneficiaries of the Teachers' Retirement System of Illinois (Downstate), State Universities Retirement System of Illinois (Universities System) and Public School Teachers Pension and Retirement Fund (Chicago Fund), brought suit against the Illinois Governor, Comptroller and Treasurer for declaratory judgment and mandamus to compel expenditures as if the appropriation bills had been passed or restored to their original amount, notwithstanding the veto and reduction by the Governor and refusal of the General Assembly to override.

ARGUMENT

I.

THE JUDICIAL BRANCH CANNOT EXERCISE POWERS VESTED IN THE EXECUTIVE AND LEGISLATIVE BRANCHES.

Petitioners disapprove the Governor's veto and reduction of certain appropriation bills, and the refusal of the General Assembly to pass the bills over the Governor's objections. Petitioners ask the courts to judicially effect an override of the vetos and reductions, and to cause the original appropriation bills to become law by court decree.

There is no contention that the vetos and reductions were not executed in the manner prescribed in the 1970 Illinois Constitution, Article IV, § 9.

It is uncontested that the 78th Illinois General Assembly, having power to do so, declined to restore the reductions or to pass the appropriation bills over the Governor's actions, as is provided in the Constitution, Art. IV, § 9(c), (d).

Budget making and the power to appropriate public funds are expressly vested by the Constitution, Article VII, § 2(a), (b), in the Governor and the General Assembly. If this exclusive Legislative and Executive authority to raise and expend moneys was intended to be abridged by the judiciary, appropriate language would have been utilized, as in the Transportation Bond Act, Ill. Rev. Stats. 1973, Chap. 127, § 707 or the School Construction Bond Act, Ill. Rev. Stats. 1973, Chap. 122, § 1211.

In *Meyers* v. *United States*, 272 U.S. 52, 116, 47 S. Ct. 21 (1926), the Court said:

> "Accordingly, the Constitution was so framed as to vest in the Congress all legislative powers therein granted, to vest in the President the executive power, and to vest in one Supreme Court and such inferior courts as Congress might establish, the judicial power. From this division on principle, the reasonable construction of the Constitution must be that the branches should be kept separate in all cases in which they were not expressly blended, and the Constitution should be expounded to blend them no more than it affirmatively requires. Madison, 1 Annals of Congress, 497. This rule of construction has been affirmed by this Court in Meriwether v. Garrett, 102 U.S. 472, 515; Kilbourn v. Thompson, 103 U.S. 168, 190; Mugler v. Kansas, 123 U.S. 623, 662."

Article II, § 1 of the 1970 Illinois Constitution expressly provides:

> "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

Illinois case decisions are a continuing reaffirmation of this separation of powers. Under the 1848 Illinois Constitution, see *People ex rel. Billings* v. *Bissel*, 19 Ill. 229, 230-231, 233 (1857). Under the 1870 Illinois Constitution, see *People ex rel. Bruce* v. *Dunne*, 258 Ill. 441, 447, 449-450, 452-453, 101 N.E. 2d 560 (1913). Under the 1970 Constitution, see *County of Cook* v. *Ogilvie*, 50 Ill. 2d 379, 384, 280 N.E. 2d 224, 384 (1972).

The 1970 Illinois Constitution, Article IV, §9 in great detail, and without exception, delegates to the Governor the power to veto or reduce appropriation bills, and grants to the General Assembly the power to override the Governor.

People ex rel. Millner vs. Russell, 311 Ill. 96, 99-101, 109 (1924), is a case virtually identical to the instant action, and dispositive of the precise issue raised by Petitioners.

In *Millner,* relators argued that a Governor did not have authority to veto an appropriation bill required to fund obligations under existing laws. The Illinois Supreme Court specifically held:

> "... The language of the constitution it will be seen, is broad and all-inclusive. It requires 'every bill' passed by the General Assembly to be approved by the Governor, or, in case he disapproves it, to be passed over his veto before it becomes a law. The language is direct, plain, and affords no basis for the construction that bills or items of bills making appropriations for salaries of officers of the State government were intended to be excepted from bills the Governor has power to veto. . . . The constitution and laws necessarily invest public officials with certain powers in the performance of the duties of the office. If the official neglects to exercise the powers necessary to a proper discharge of duties of the office, or if he wrongfully exercises or exceeds his powers, the evil cannot be remedied by holding he never had the power he abused. It would be a greater evil to so hold than is the infrequent evil of abuse or wrongful exercise of powers by public officers. Men may, and do, honestly differ about what powers the constitution and laws confer on public officials and what acts are a proper exercise of the powers conferred. It would be a most unwise departure from our long-existing standards and principles of government to deny the existence of lawfully conferred powers because their abuse or wrongful exercise is possible.
>
> * * *
>
> We think the power to collect and appropriate the revenue of the State is one peculiarly within the discretion of the legislature. It is a very delicate and responsible trust, and if not used properly by the legislature at one session the people will be certain to send to the next more discreet and faithful servants. It is

> within the legitimate power of the judiciary to declare the action of the legislature unconstitutional where that action exceeds the limits of the supreme law, but the courts have no means and no power to avoid the effects of non-action. The legislature being the creative element in the system, its actions cannot be quickened by the other departments. Therefore, when the legislature fails to make an appropriation we cannot remedy that evil. It is a discretion specially confided by the constitution to the body possessing the power of taxation."

Cloaked in the felicitious trappings of teachers' pension funding, to accomplish their ends, Petitioners advocate no less than destruction of the most fundamental and long standing constitutional principles of separation of powers.

II.

POLITICAL QUESTIONS ARE NOT JUSTICIABLE

The instant litigation does not involve diminution or denial of vested pension and retirement benefits. No Petitioners are not receiving the pensions to which they are entitled.

The Illinois pension system actually has current assets in excess of $1.6 billion dollars, and is continuing to grow at a rate in excess of $250 million per year. Even if all new contributions were to cease today, the assets are now sufficient to pay all pensions due in the next ten years.

The debate over so-called "full funding" of the State pension system, i.e. "paid-up" versus Social Security type financing, has been a continuing public policy battle, of which the present litigation is but the latest thrust. (See Verbatim Proceedings, Sixth Illinois Constitutional Convention, Vol. IV, pp. 2925-2933) Petitioners seek to have the courts decide that political question.

The vetos of the Governor, and the refusal of the 78th General Assembly to override, or to restore reductions by even a majority vote, thus a Legislative concurrence in the final executive budget figures, is patently political and nonjusticiable.

Section 57.1 of the Illinois Civil Practice Act, Ill. Rev. Stats. 1973, Chap. 110, §57.1 provides:

> ". . . In no event shall the Court entertain any action or proceeding . . . involving any political question where the defendant is a State officer whose election is provided for by the Constitution."

See the Tenth and Eleventh Amendments to the United States Constitution.

In *Baker* v. *Carr*, 369 U.S. 186, 210, 82 S. Ct. 706 (1968), the court said:

> "The nonjusticiability of a political question is primarily a function of the separation of powers."

It is not a solution to Petitioners' complaints to run rough-shod over the constitution.

> "If other changes are needed in the present system, they should be sought in the legislature and not in the courts."
>
> *McInnis* v. *Shapiro*, 293 F. Supp. 327, 337 (N.D. Ill. Ed. 1968), aff'd sub nom. McInnis v. Ogilvie, 394 U.S. 322 (1969)

See also *People ex rel. Hamer* v. *Jones*, 39 Ill. 2d 360, 235 N.E. 2d 589, 594, 596 (1968)

CONCLUSION

The Illinois Constitution embodies a separation of powers, and checks and balances between the three branches of government.

The executive branch is expressly granted the power of veto over legislative acts, including reduction of appropriation bills. The legislative branch is expressly granted the power to override vetos and to restore reductions in appropriations.

No power is granted to the judicial branch with respect to vetos or overrides exercised pursuant to the Constitution.

In accordance with the 1970 Illinois Constitution, the Governor and General Assembly have exercised their veto and reduction powers with respect to certain appropriation bills for the funding of the State teachers' pension and retirement system.

Courts do not have jurisdiction to supplant the other branches of government and to judicially override a veto, or to direct the passage of legislation by decree.

Petitioners' complaints are not justiciable and were properly dismissed.

WHEREFORE Respondents respectfully pray that the Petition for Writ of Certiorari to the Illinois Supreme Court be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, et al.,

Plaintiffs

vs.

DANIEL WALKER, as Governor of the State of Illinois,

Defendant

No. 73 CH 5722

MEMORANDUM OPINION

The Complaint seeks a declaration that the veto and certain reductions by the Governor of appropriations by the General Assembly for contributions by the State to the State Universities Retirement System are void

A Motion to Strike the Complaint in behalf of the defendant and a Motion for Summary Judgment in behalf of the plaintiffs were filed.

Upon examination of the pleadings and the Memoranda filed in connection with these Motions by cousel, it is my opinion as follows:

1. The above suit, being a class action, it properly belongs in Chancery.

2. The Complaint alleges that for the fiscal year 1974, "the amount which is required" in accordance with actuarial computations is $74,940,500. The General Assembly appropriated the sum of $54,759,100, and also, a sup-

plemental appropriation of $12,138,599. The Governor reduced the appropriation to the sum of $20,190,600 and vetoed the supplemental appropriation of $12,138,599.

3. The plaintiffs base their Complaint upon the following constitutional and statutory provisions:

> (a) Article XII, Section 5 provides that membership in any pension or retirement system shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired;
>
> (b) Chapter 108½, Section 15-156 provides that the required state contributions to the State Universities Retirement System "are obligations of the State of Illinois;"
>
> (c) Chapter 108½, Section 15-555 provides that the contributions from the state appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirements * * * plus interest at the prescribed rate on the unfunded accrued liability.

4. The Complaint seeks a declaration by this Court that the Governor's veto and reductions are void because he lacks the power and authority to veto or reduce appropriations "which are specifically mandated and required by pre-existing law, constitutional or statutory."

5. The Governor acted in accordance with the following:

Article IV. Section 9 of the 1970 Illinois Constitution provides:

> "(a) Governor may reduce or veto any item of appropriation in a bill presented to him."

Did the Governor violate the requirements under pre-existing law? It is obvious to this Court that the Governor has not by his veto and reduction violated "any mandated requirement of the pre-existing law, constitutional or statutory," for the following reasons:

(a) He has complied with the mandate by providing for funding the current service costs by the appropriation of $20,190,600;

(b) Whether or not this amount fully covers the current service costs plus accrued interest represents an issue of fact as to adequacy. By failing to override the veto and reduction, it must be assumed that the legislature agreed with the Governor as to adequacy;

(c) The Complaint alleges that the actuarial requirement is $74,940,500. The Governor is not obliged to accept this amount as the actuarial reserve requirement. Obviously, in his judgment, the sum of $20,190,600 is adequate for the funding in compliance with the constitutional and statutory requirement;

(d) The Governor has the right to disagree with the General Assembly as to what is the actuarial requirement for such funding, as in any appropriation by the General Assembly.

6. The *adequacy* of the amount necessary for such funding is for the General Assembly and the Governor to determine and is not available to question by the plaintiffs in any judicial proceedings. The Court is without power to adjudicate the adequacy of any appropriation.

7. This Court has no jurisdiction to question the amount of any appropriation by the General Assembly and by the Governor, even if their computations are in error.

8. The veto and reductions did not impair the contractual obligations of the State. The obligation of the State is to fund the "current service costs and certain accrued interest." The appropriation of the sum of $20,190,600 satisfied that obligation of the State.

9. The Court of Claims' decision is not a precedent which this Court may follow. It is a suit against the State of Illinois and does not involve the power of veto or reduction by the Governor. The attention of the Court of Claims was evidently not called to the fact that the constitutional and statutory mandate for funding was complied with by whatever appropriation was made by the General Assembly and that the only question before the Court was the adequacy of such appropriation. With all due respect to the Court of Claims, I cannot accept the decision as stare decisis.

Accordingly, the Motion to Strike the Complaint by the defendant should be sustained; the Motion for Summary Judgment by the plaintiffs should be denied. Please present a formal order to the above effect.

/s/ SAMUEL B. EPSTEIN

SAMUEL B. EPSTEIN, Judge

APPENDIX B

People ex rel. Illinois Federation of Teachers

v.

Dan Walker, et al.

No. 73 L 18562

ORDER

This matter having come before the Court on defendants' Motion to Dismiss, the Court having reviewed the memoranda of the parties and having heard arguments, the Court finds and it is hereby ordered:

1. This Court lacks jurisdiction to declare the constitutionality and/or legal validity of the Governor's veto, and

2. The defendants' Motion to Dismiss is therefore granted and this cause is hereby dismissed.

/s/ EDWARD F. HEALY,

Judge.

EED THROUGH